

AG Contract No. KR97-2697TRN
ADOT ECS File No. JPA 97-208
Project: RAM-600-2-514/H2059 01C
Section: SR-51, Shea - Thunderbird

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PHOENIX

THIS AGREEMENT is entered into this date 8th day of August, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-964, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PHOENIX, acting by and through its CITY MANAGER (the "City").

I. RECITALS

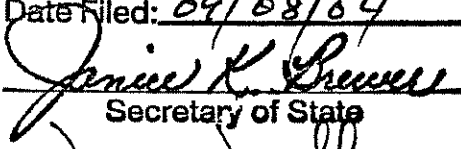
1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has resolved to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by the City Charter, Chapter II, Section 2 i. to enter into this Agreement and has by resolution/ordinance, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. Incident to an improvement project to SR-51 from Shea Boulevard to Thunderbird Road the City requests the State design and construct a 10 foot wide 4" thick concrete path from Hearn Road to 36th Street in Indian Bend Wash, to include lighting along the path from approximately 36th Street to south of Hearn Road, at a fixed cost of \$172,551.00, as shown on Exhibit "A", attached hereto and made a part hereof, herein referred to as the "Project".

4. On the 10th of October 1996, the City and the State entered into an intergovernmental Agreement related to the Project known as **JPA 96-015** under AG Contract No. KR96-0548TRN, filed with the Secretary of State as Agreement No. 21101 (the "First Agreement"). The parties intend that this Agreement shall supersede and replace the First Agreement.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows.

NO. 27043
Filed with the Secretary of State
Date Filed: 09/08/04

Secretary of State

By: 

II. SCOPE OF WORK

1. The State will:

a. On or before July 1, 2004, invoice the City in the amount of \$172,551.00 (\$16,390.00 for design and \$156,161.00 for construction), for the total cost of the Project, as shown on Exhibit "A".

b. Provide to State standards design plans, specifications and such other documents and services required for a construction bidding and construction of the Project. Incorporate City review comments as appropriate.

c. Call for bids, and with the written concurrence of the City, award one or more contracts to accomplish the Project. Administer it and make all payments to the contractor(s). Confer with the City on any City related contract modifications. Be responsible for any contractor claims for extra compensation attributable to the State. Upon completion, approve and accept the Project on behalf of the parties hereto with the City's concurrence.

2. The City will:

a. On or before July 1, 2004 and receipt of an invoice, reimburse the State the fixed cost of \$172,551.00, within (30) thirty-days for the total cost of the Project.

b. Review the design documents and provides comments. Be responsible for any contractor claims for extra compensation due to delay or for whatever reason attributable to the City.

c. Upon completion and acceptance of the Project by the State, provide maintenance to the bike path, bike path lighting, and electrical energy to operate the bike path lighting.

3. It is understood and agreed by both parties that:

a. This Agreement supersedes that certain Agreement listed as JPA 96-15 under AG Contract No.: KR96-0548TRN and filed with the Secretary of State as Agreement No.: 21101.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in force and effect until completion of said Project; provided, however, that this Agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time upon (30) thirty-days written notice to the other party.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this Agreement to allow the above mentioned to responsibly request the State records be produced at a selected time and designated State office.

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518 as applicable.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The provisions of Arizona Revised Statutes Section § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State and the City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State or the City as applicable at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised, and the State and the City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, MD 616E
Phoenix, AZ 85007

City of Phoenix
Street Transportation Director
200 W. Washington 5th floor
Phoenix, AZ 85003-1611

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF PHOENIX, a Municipal
Corporation, Frank Fairbanks, City Manager

STATE OF ARIZONA
Department of Transportation

By Thomas E. Callow
THOMAS E. CALLOW, P.E.
Street Transportation Director

By Daniel S. Lance
DANIEL S. LANCE, P.E.
Deputy State Engineer

ATTEST

By Susan J. Walsh
ACTING
City Clerk



26 July 2004-revised-ly

CITY CLERK DEPT.
2004 AUG 19 AM 8:44

ORDINANCE NO. S-30661

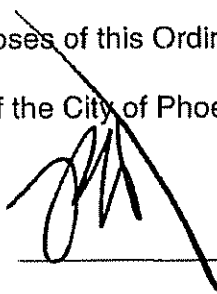
AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA THROUGH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION OF A BICYCLE PATH FROM VENTUROSO PARK TO 36TH STREET AT THE INDIAN BEND WASH; AND FURTHER AUTHORIZING THE CITY CONTROLLER TO DISBURSE FUNDS FOR THE PURPOSES OF THIS ORDINANCE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:


SECTION 1. The City Manager is authorized to enter into an intergovernmental agreement with the State of Arizona through the Arizona Department of Transportation for the construction of a bicycle path from Venturoso Park to 36th Street at the Indian Bend Wash.

SECTION 2. The City Controller is authorized to disburse funds in the amount of ONE HUNDRED SEVENTY-TWO THOUSAND FIVE HUNDRED FIFTY-ONE DOLLARS (\$172,551.00) for purposes of this Ordinance.

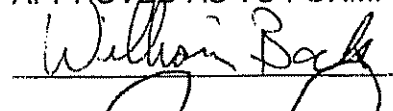
PASSED by the Council of the City of Phoenix this 4th day of February, 2004.


MAYOR

ATTEST:


City Clerk

APPROVED AS TO FORM:


City ^{ACTING} Attorney

REVIEWED BY:


City Manager

DLB159497; 2/4/04; #11

FILED - 2 PM 3:08
CITY CLERK DEPT.

**CITY OF PHOENIX
REQUEST FOR COUNCIL ACTION**

Complete this form per O.P. 1.906 and A.R. 4.11.
Refer to the City Council Agenda Process Reference Guide for Assistance

ACTION REQUESTED	Formal Action:	OR	Legal Document:
	Bid Award <input type="checkbox"/>		Ordinance <input checked="" type="checkbox"/>
	License Application <input type="checkbox"/>		Resolution <input type="checkbox"/>
	Public Hearing <input type="checkbox"/>		Emergency Clause? <input type="checkbox"/>
	Other <input type="checkbox"/>		(for use only w/ord. or res. requests)

IMPACTED DISTRICT(S)	DISTRICT 3	ADDITIONAL BACKUP MATERIAL SENT UNDER SEPARATE COVER?	<input type="checkbox"/>
SUBJECT	IGA WITH ADOT TO CONSTRUCT A BICYCLE PATH FROM VENTUROSO PARK TO 36TH ST IN THE INDIAN BEND WASH		

REQUESTED AGENDA DATE	2/4/2004	PREPARED BY	Name <u>Ray Dovalina, P. E.</u> Department <u>Street Transportation</u> Phone <u>495-5817</u>
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APPROVALS	Division Head:	J. Donald Herp, P. E.	If prepared for another department: Department Name:
	Department Head:	Thomas E. Callow, P.E.	
			Approval:

BID AWARD INFORMATION	Bid Surety Required? <input type="checkbox"/>	Performance Surety Required <input type="checkbox"/>
	Submitted by Low Bidder? <input type="checkbox"/>	Amount? _____
	Contract Required? <input type="checkbox"/>	Requisition No. _____

CONTRACT INFORMATION	Contract Amendment? <input type="checkbox"/>
	If Yes, Current Contract No. _____
	Approved by: Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Formal Action <input type="checkbox"/> on Date: _____

BUDGET INFORMATION	\$ 172,551.00	To Be Encumbered? <input checked="" type="checkbox"/>
	Source of Funds: AHUR 0007	Fiscal Year? <u>FY03/04</u>
	Fund Center(s) (SAP-FM): ST87600047	
	Commitment Item(s) (SAP-FM): 510130	
	Availability of Funds Approval: Lauri L. Wingenroth	

CITY MANAGER'S OFFICE	Approved by Sheryl Sculley	CM Control No. 11
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CITY CLERK DEPARTMENT	Council Action Taken: <u>Adopted</u>		RCA No. <u>43929</u>
	Ordinance Number: <u>S-30661</u>		Contract No. <u>110224</u>
	Resolution Number: _____		Meeting Date <u>2/4/2004</u>
	Comments: _____		Item No. <u>42</u>

ITEM**DISTRICT 3****IGA WITH ADOT TO
CONSTRUCT A BICYCLE PATH
FROM VENTUROSO PARK TO
36TH ST IN THE INDIAN BEND
WASH**

Request to authorize the City Manager to enter into an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation (ADOT) for construction of a lighted concrete bicycle path from Hearn Road (Venturoso Park) to 36th Street in the Indian Bend Wash at the SR-51 and approval for the City Controller to disburse funds.

The City of Phoenix requested ADOT to design and construct a bicycle path along the Indian Bend Wash from Hearn Road to 36th Street in accord with the City's adopted Bikeway Plan. This multi-use path will provide a connection from the on-street path along 36th Street to the linear path that ADOT constructed along the SR-51 from Hearn Road to north of Bell Road.

Due to staff changes at the City and ADOT, an RCA was not prepared to approve the agreement and, therefore, the agreement was not executed. At this time, in order for ADOT to invoice the City for this work and for the City to pay ADOT, City Council action is needed and the agreement must be executed.

Financial Impact

The total cost for these improvements was \$172,551 and included design, construction, and construction administration. ADOT has completed this work, acting in good faith and based on a draft IGA.

Arizona Highway User funds are budgeted for this project (ST57600047).

Citizen Notification

In the 1990s, numerous meetings were held with the public during the project development to discuss the overall construction elements and schedules.

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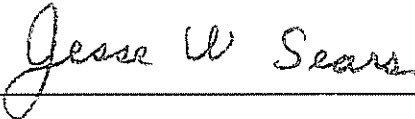
JPA

ATTORNEY APPROVAL FORM

FOR THE CITY OF PHOENIX

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF PHOENIX, an agreement among public agencies, which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this _____ day of _____, 2004.



ACTING


City Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8849

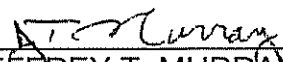
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR97-2697TRN (**JPA 97-208**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 27, 2004

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY, for
SUSAN E. DAVIS
Assistant Attorney General
Transportation Section